

1 MICHAEL B. BROWN, Bar No. 179222
michael.brown@stoel.com
2 THOMAS A. WOODS, Bar No. 210050
thomas.woods@stoel.com
3 BENJAMIN J. CODOG, Bar No. 307034
ben.codog@stoel.com
4 MICHELLE J. ROSALES, Bar No. 343519
michelle.rosales@stoel.com
5 STOEL RIVES LLP
500 Capitol Mall, Suite 1600
6 Sacramento, CA 95814
Telephone: 916.447.0700
7 Facsimile: 916.447.4781

8 *Attorneys for Plaintiff*
9 **METROPOLITAN LIFE INSURANCE COMPANY**

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

12
13 METROPOLITAN LIFE INSURANCE
14 COMPANY, a New York corporation,

15 Plaintiff,

16 v.

17 MARICOPA ORCHARDS, LLC, a California
18 limited liability company; FARID ASSEMI, an
individual; FARSHID ASSEMI, an individual;
DARIUS ASSEMI, an individual; and DOES
1-100,

19 Defendants.

20 Case No. 1:24-cv-01231-KES-SAB

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**PLAINTIFF'S EX PARTE MOTION
FOR APPOINTMENT OF RECEIVER
AND FOR PRELIMINARY
INJUNCTION**

Date:
Time:
Dept.:

Action Filed: October 10, 2024
Trial Date: Not Set

**EX PARTE MOTION FOR APPOINTMENT OF RECEIVER
AND FOR PRELIMINARY INJUNCTION**

Plaintiff METROPOLITAN LIFE INSURANCE COMPANY (“Plaintiff” or “MetLife”), by and through its counsel, and for its *Ex Parte Motion for Appointment of Receiver and for Preliminary Injunction* (the “Motion”), states as follows:

I. INTRODUCTION

Defendant Maricopa Orchards, LLC (“Borrower Defendant”) together with affiliated Guarantors¹ are in default to MetLife (alone) on an over \$1.4 million secured debt obligation. Since mid-September, some of the Defendants and their affiliated farming entities have been sued by other financial institutions for defaults on secured agricultural loans associated with imperiled harvests and imminent loss of trees, irrigated crops, water rights, and delivery systems. Defendants are out of money, and the collateral that is valuable to California’s agricultural supply stream *is out of time*. A receivership and injunction to protect the land and water rights MetLife is responsible for is now warranted and requested.

As security for the obligations under MetLife's Loan Documents², the Borrower Defendant granted to MetLife, among other rights, priority and continuing, recorded (and perfected) security interests in real property and personal property as collateral located in Kern County. As part of the Loan Documents, the Borrower Defendant expressly consented to MetLife's appointment of a receiver in the event of default. (Complaint³, Ex. 3 at Section 13.1(g) [Deed of Trust].)

Accordingly, pursuant to Federal Rule of Civil Procedure 66 and L.R. 232, MetLife requests the appointment of a receiver in order to conserve, maintain, and manage: (i) real property owned by Borrower Defendant, including all appurtenances, improvements, permanent plantings, water

¹ The Guarantor Defendants include Farid Assemi, Farshid Assemi and Darius Assemi, each individually.

² MetLife incorporates the terms of its October 10, 2024 Complaint (Dkt. 1). Capitalized terms not defined herein shall have the meanings ascribed to them in the Complaint.

³ MetLife filed the Complaint for (1) Breach of Loan Agreement; (2) Breach of Guaranty; (3) Judicial Foreclosure; (4) Specific Performance and Appointment of Receiver; (5) Injunctive Relief; and (6) Replevin.

1 rights and irrigation equipment and infrastructure, easements, and rent, issues and profits (the “Real
 2 Property”) (as further defined and described in MetLife’s Complaint, ¶ 13); and (ii) personal
 3 property, not limited to: all equipment, goods, and accounts, whether attached or appurtenant to the
 4 Real Property; all crops (including without limitation harvested crops, farm products, and seed and
 5 the products and proceeds thereof) along with all present and future income, rents, issues, profits
 6 and revenues of the crops now or hereafter growing on the Real Property; all rights to the use and
 7 enjoyment of water, whether or not appurtenant to the Real Property, and all improvements for
 8 water delivery and storage, and easements and permits associated with the same (collectively, the
 9 “MetLife Receivership Property”).

10 Defendants have been provided ample notice of this (and other) defaults. (See Dkt. 1 at
 11 ¶¶ 25-26 [Complaint].)⁴ The defaults are evidently incurable, as Borrower Defendant and its
 12 affiliates efforts to secure long-term financing to support the agriculture have fallen short. (RJN,
 13 Ex. 1-3.) Borrower Defendant and its affiliates for instance, are already subject to two receiverships,
 14 one in the process of being continued and expanded from its original scope.⁵ (*Id.*) The crop harvest
 15 is also set to conclude by the end of October 2024, and no further funding exists after that time to
 16 preserve and maintain the MetLife Receivership Property. (RJN, Ex. 3.) Without sufficient funding,
 17 the MetLife Receivership Property, and particularly the plantings comprising a significant portion
 18 of the value thereof, are subject to damage or destruction if not properly maintained during and
 19 after harvest. A receiver is also necessary to preserve and protect MetLife’s interests in the water
 20 rights and crop proceeds relating to the MetLife Receivership Property. Receiver Lance Miller in
 21 the related action recently prepared and distributed a Weekly Update Memorandum, dated October
 22 21, 2024, which identified \$494,400 in water sales from unspecified Maricopa farming entities.

23
 24 ⁴ See also, Request for Judicial Notice (“RJN”), filed herewith, Exs. 1 and 2.
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⁵ Borrower Defendant and its affiliated farming entities have stipulated and agreed to the appointment of a receiver in two related actions involving real property collateral in their integrated farming operations and acknowledged that “Borrowers face significant cash flow issues and will not have sufficient case to maintain, preserve, and care for the Property, including but not limited to trees and crops” and that “[s]uch actions would cause damage to the Property, including causing the trees (which make up a significant value of the Property) to be damaged or die.” (RJN, Ex. 1 at 4:1-4.)

1 (Declaration of Jeremy Rasmussen (the “Rasmussen Decl.”), Ex.1.) A receiver is warranted to
2 preserve and prevent the misappropriation of the MetLife’s collateral.

3 MetLife is contractually and equitably entitled to the immediate appointment of a receiver
4 to manage and operate, subject to the discretion of this Court, the MetLife Receivership Property.
5 MetLife also has the right to a preliminary injunction because it faces irreparable harm should
6 Borrower Defendant and/or other associated Defendants’ officers and directors, affiliates, creditors
7 or other interested parties interfere with the receiver in the performance of its duties.

8 This requested order will ensure that MetLife shall protect and preserve the MetLife
9 Receivership Property. MetLife requests that this Court issue an order appointing a receiver over
10 the MetLife Receivership Property and enjoining any and all Borrower Defendant, Guarantors, and
11 third parties from interfering with the receiver’s maintenance and operation of the MetLife
12 Receivership Property during the pendency of these proceedings. In addition to maintaining and
13 managing the MetLife Receivership Property, MetLife also requests that the order appointing the
14 receiver instruct the receiver to: operate the MetLife Receivership Property pending any sale of
15 such property; sell inventory and collect accounts in the ordinary course of operations; liquidate
16 the MetLife Receivership Property, in whole or in part, by auction or by private sale subject to
17 Court approval; and perform all other acts consistent with the terms of the order entered by the
18 Court.

19 **II. FACTUAL AND PROCEDURAL BACKGROUND**

20 **A. THE LOAN DOCUMENTS AND LENDER’S COLLATERAL.**

21 On or about September 28, 2015, MetLife loaned Maricopa the original principal amount
22 of One Million Eight Hundred Fifty Thousand and 00/100 Dollars (\$1,850,000.00) (“Loan”). The
23 Loan was secured by, *inter alia*, the Deed of Trust in favor in favor of MetLife, as beneficiary.
24 (Complaint, Exs. 1-3.) The Deed of Trust secured the Loan in favor of MetLife encumbering the
25 Real Property and further includes as additional collateral an absolute assignment of Borrower
26 Defendant’s right, title, and interest in all present and future income, issues, profits, and revenues
27 of the Real Property, Crops from the Real Property, leases relating to and arising from the Real

1 Property, and Proceeds from the Real Property (as those terms are defined therein), and all benefits
 2 to be derived therefrom. (Dkt. 1-3 at Granting Clause C, § 10.5(a) [Deed of Trust].)⁶

3 The Loan is also secured by that Collateral Assignment of Water Supply Agreement and
 4 Easement dated as of September 28, 2015, and recorded on September 12, 2024, in the Kern County
 5 Official Records as Document No. 224110538 (“Collateral Assignment”), assigning to Lender as
 6 security for the Loan all rights and interests of Borrower under the Water Supply Agreement and
 7 Easement dated as of September 28, 2015 benefitting and appurtenant to the Real Property (the
 8 “Water Agreement”). (Dkts. 1-5, 1-6.)

9 The Loan is also secured by “Water Rights” as that term is defined in the Deed of Trust
 10 including, without limitation, those rights of Borrower Defendant under the Water Agreement that
 11 was assigned to MetLife under the Collateral Assignment, and all other agreements, service
 12 contracts and other entitlements to water. (Dkt. 1 at ¶ 14 [Complaint]; Dkt. 1-1 at § 2.4 [Loan
 13 Agreement]; Dkt. 1-3 at Granting Clause E [Deed of Trust].)

14 The Deed of Trust constitutes a Security Agreement with respect to the MetLife
 15 Receivership Property. As further described in the Complaint and attachments thereto, MetLife
 16 possesses, through the Deeds of Trust, priority security interests in: (i) Real Property, comprising
 17 of approximately 159.69 acres of irrigated agricultural land associated with Accessor’s Parcel
 18 Numbers (“APN”) owned by the Borrower Defendant⁷; (ii) all appurtenances, fixtures, permanent
 19 plantings, rights and benefits thereto, including all water rights, water agreements and related water
 20 delivery contracts, easements, leases, water storage agreements, rights under irrigation districts,
 21 well agreements, drainage rights and all water inventory and water in storage, water permits, and
 22 water licenses; and (iii) the products and proceeds thereof related to the Real Property including,
 23 but not limited to, the products and proceeds of blueberry crops.

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25 ⁶ Deed of Trust was amended by that certain Consent to Transfer by and between Borrower and MetLife, dated October 28, 2022, and recorded on May 25, 2023, in the Kern County Official
 26 Records as Document No. 223061422 (“Consent”), pursuant to which MetLife consented to the
 27 transfer of the ownership interest of the non-borrower trustors in and to the Real Property. (Dkt. 1-
 4.)

28 ⁷ The APN for the real property located in Kern County is: APN 238-340-24.

1 **B. BORROWER DEFENDANT'S INCURABLE DEFAULTS.**

2 **1. Borrower Defendant's Unpaid Loan.**

3 On September 4, 2024, MetLife provided to all Defendants a Notice of Default and Demand
4 for Payment for the approximate total due of \$70,776. Defendants were further informed that if
5 payment was not received by September 10, 2024, MetLife would initiate a demand and
6 acceleration of the Loan. (Dkt. 1-10.)

7 The past-due amount was not paid by September 10, 2024, and on September 18, 2024,
8 MetLife sent Defendants a Notice of Default and Acceleration of Debt. (Dkt. 1-11.)

9 As of on or about September 18, 2024, the amounts that remain due and owing under the
10 Loan Documents, including but not limited to all principal outstanding, interest, late charges,
11 attorneys' fees, financial advisor fees, expenses, and advances, are in excess of \$1,430,114.00.
12 (Rasmussen Decl., ¶ 20.)

13 **2. Other Defaults.**

14 Except for the defaults that are subject to the two pending receiverships in the potentially
15 related actions, MetLife does not know the extent of Defendants' defaults to additional lenders or
16 creditors, but these defaults (and the acceleration of the Loan) augment the precarious financial
17 situation for Borrower Defendant and its related entities and affiliates.

18 **C. BORROWER DEFENDANT'S FINANCIAL DISTRESS IS INCURABLE AND
19 PUTS THE METLIFE RECEIVERSHIP PROPERTY AT RISK OF DISTRESS.**

20 Borrower Defendant's financial strain and lack of operating cash flow places the MetLife
21 Receivership Property in serious peril of distress itself. MetLife is informed and believes, based on
22 discussions with employees at Agriglobe LLC who recently conducted inspections of the Real
23 Property and interviews with Borrower Defendant's farm managers, there has been deferred
24 cultural maintenance of the biological assets on the MetLife Receivership Property because of
25 Borrower Defendant's financial distress, and the following needs to occur or the biological assets
26 on the MetLife Receivership Property will be damaged or destroyed: post-harvest irrigation; post-
27 harvest fertility; post-harvest soil amendments; winter sanitation (removal of any crop remaining

1 on the trees); dormant insecticide spray applications; vertebrate control; pruning; and general
 2 repairs and maintenance to the irrigation system and other infrastructure. (Rasmussen Decl., ¶ 28.)

3 Borrower Defendant and its related farming entities have significant cash flow and liquidity
 4 issues, and has insufficient funds to operate post-harvest. (*Id.*, at ¶ 26.) These issues are likely to
 5 result in an inability to pay payroll and maintain a sufficient workforce necessary to manage the
 6 MetLife Receivership Property including the water rights associated therewith. (*Id.*, Ex. 1.)

7 As a result of the foregoing, there is manifest danger of loss, deterioration, and diminution
 8 of the MetLife Receivership Property, which, along with the revenue generated by its operations,
 9 are the primary sources for repayment of the Loans, and MetLife, as an interested and secured party,
 10 is threatened with material losses and injuries for which it has no adequate remedy at law against
 11 Borrower Defendant.

12 **III. ARGUMENT AND LEGAL AUTHORITY**

13 **A. METLIFE IS ENTITLED TO THE APPOINTMENT OF A RECEIVER.**

14 Federal courts may appoint a receiver under their inherent equitable powers, which
 15 appointment shall not be disturbed absent an abuse of discretion. *Canada Life Assur. Co. v. LaPeter*,
 16 563 F.3d 837, 843-44 (9th Cir. 2009). Courts consider several factors in their analysis, including:
 17 (1) whether the moving party has a valid claim and is likely to succeed in the action; (2) whether
 18 the property interest at issue “is in imminent danger of being lost, concealed, injured, diminished
 19 in value, or squandered”; (3) the possibility of irreparable injury to the moving party’s interest in
 20 property; (4) whether the defendant is of doubtful financial standing; and (5) whether a receiver is
 21 necessary to protect the property or property interest of Plaintiff and other parties. *Id.* at 844; *see also N.Y. Life Ins. Co. v. Watt West Inv. Corp.*, 755 F. Supp. 287, 292 (E.D. Cal. 1991) (same). The
 22 chief factors are the adequacy of the security serving as collateral and financial state of the
 23 defendant. *N.Y. Life*, 755 F. Supp. at 292.

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1 **1. Borrower's Written Agreements Establish MetLife's Entitlement to the**
 2 **Appointment of a Receiver.**

3 Federal courts have upheld the validity of receiverships based on an express agreement
 4 between lender and debtor. *See Okura & Co. (Am.), Inc. v. Careau Grp.*, 783 F.Supp. 482, 499
 5 (C.D. Cal. 1991) (“the appointment of receiver, as provided for in the Deed of Trust and Security
 6 Agreement, for the defendants' property is necessary to protect the plaintiff's interest”).

7 Here, Borrower Defendant expressly consented to the appointment of a receiver in the event
 8 of a default in through the Deed of Trust. Under the Loan and Deed of Trust, pursuant to the “Rights
 9 and Remedies on Default,” MetLife has the right to have a receiver appointed to:

10 take possession of any or all of the Property, with the power to protect and preserve
 11 the Property, to operate the Property preceding foreclosure or sale, to collect the
 12 Proceeds from the Property and apply the Proceeds, over and above cost of the
 13 receivership, against the Indebtedness. Beneficiary may apply to any court of
 14 competent jurisdiction for the appointment of a receiver or receivers for the
 15 Property and of all the earnings, revenues, rents, issues, profits and income
 16 therefrom, ex parte, without notice, and without regard to the sufficiency or value
 17 of any security for the obligations secured hereby or the solvency of any party
 18 bound for its payment, the expenses of which shall be secured by this Deed of Trust.
 19 The receiver may serve without bond if permitted by law.

20 (Dkt. 1-3 at § 13.1(g) [Deed of Trust].)

21 **2. MetLife Has a Valid Claim and Is Likely to Succeed.**

22 A receiver is proper here, as MetLife is overwhelmingly likely to succeed on the merits of
 23 its claims for breach of the Loan. *See N.Y. Life*, 755 F. Supp. at 292 (“[I]n appointing receivers
 24 federal courts consider ... plaintiff's probable success in the action”). The Rasmussen Declaration
 25 comprehensively addresses Borrower Defendant's continuing defaults under the Loan Documents
 26 and Borrower Defendant's failure to timely pay in response to MetLife's Notice of Default and
 27 Acceleration of Debt. The amounts due and owing to MetLife as a result of those defaults continue
 28 to increase on a daily basis.

29 **3. MetLife Is Entitled to a Receiver to Protect Its Property Interests and**
 30 **Collateral From Irreparable Harm.**

31 A court is “well within its discretion” to appoint a receiver where property constituting
 32 collateral is “in danger of substantial waste and risk of loss” or “may become insufficient to

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1 discharge the debt which it secures.” *Canada Life Assur. Co.*, 563 F.3d at 845. Borrower Defendant
 2 and its affiliates are experiencing extreme financial difficulties and will not be able to continue
 3 operating without additional funds, including being unable to maintain post-harvest activities
 4 essential to the maintenance and operation of the MetLife Receivership Property. (Rasmussen
 5 Decl., ¶ 27, Ex. 1.) If the MetLife Receivership Property is not cared for, substantial and long-
 6 lasting damage is likely to occur in the next several weeks and beyond. (See Rasmussen Decl.,
 7 ¶¶ 26-28.) The MetLife Receivership Property, including Proceeds, are under an immediate threat
 8 of damage, thereby threatening the value of MetLife’s collateral and its ability to recover. A
 9 receivership is immediately necessary to prevent Borrower Defendant from further eroding
 10 MetLife’s Receivership Property and undermining prospects for repayment.

11 **4. Borrower’s Financial Distress Requires the Court to Appoint a Receiver.**

12 A “foremost factor” in whether a receiver should be appointed is the defendant’s doubtful
 13 financial standing and imminent insolvency. *Canada Life Assur. Co.*, 563 F.3d at 844–45; *N.Y. Life*,
 14 755 F. Supp. at 292 (“Most important among the factors are the adequacy of the security and the
 15 financial position of the mortgagor”). The Borrower Defendant and its affiliates are in financial
 16 distress. Borrower Defendant and its affiliated farming entities have stipulated and agreed to the
 17 appointment of a receiver in two related actions involving real property collateral in their integrated
 18 farming operations (RJN, Exs. 1-3) and acknowledged that “Borrowers face significant cash flow
 19 issues and will not have sufficient case to maintain, preserve, and care for the Property, including
 20 but not limited to trees and crops” and that “[s]uch actions would cause damage to the Property,
 21 including causing the trees (which make up a significant value of the Property) to be damaged or
 22 die.” (RJN, Ex. 1 at 4:1-4.) There is no evidence to suggest that Borrower Defendant’s financial
 23 condition will improve at all, let alone enough to manage, operate, and appropriately care for the
 24 MetLife Receivership Property.

25 **B. THE COURT SHOULD GRANT METLIFE A PRELIMINARY INJUNCTION.**

26 “*A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
 27 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the*

1 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat'l*
 2 *Res. Def. Council, Inc.*, 55 U.S. 7, 20 (2008). In determining whether to grant a temporary
 3 restraining order or preliminary injunction, courts in this Circuit consider four factors: (1) whether
 4 the applicant is likely to succeed on the merits of their claim; (2) whether the applicant is likely to
 5 suffer irreparable harm absent the preliminary injunction; (3) whether the equities weigh in favor
 6 of the proposed injunction; and (4) whether the preliminary injunction is in the public interest. *Id.*
 7 at 20.

8 The evidence laid out above establishes each factor weighs in favor of MetLife and the
 9 Court’s issuance of immediate injunctive relief. The amounts due and owing under the Loan
 10 Documents, the defaults thereunder, and the impossibility to cure any such defaults given the size
 11 of the obligations also establish MetLife’s likeliness to succeed on the merits of its claim.
 12 Additionally, MetLife has also shown above that it is likely to suffer irreparable harm in the absence
 13 of relief, and that the balance of the equities tips in its favor. Finally, once the Court appoints a
 14 receiver herein, an injunction benefits the public interest because the receiver needs to be able fulfill
 15 its duties and obligations without potentially disruptive interference.

16 **C. IF A BOND IS REQUIRED, A NOMINAL UNDERTAKING IS APPROPRIATE.**

17 Security is required for issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

18 **1. The Court Should Order a Nominal Undertaking.**

19 In light of the Borrower Defendant’s financial distress, MetLife proposes a nominal
 20 undertaking to redress Defendants from any damage that may result from the Court’s appointment
 21 of a temporary receiver and issuance of a preliminary injunction. Any damage Borrowers’ assets
 22 may suffer as a result of the Court’s appointment of a temporary receiver and issuance of a
 23 preliminary injunction would not harm Borrowers, but MetLife. An undertaking should be nominal.

24 **2. Receiver’s Bond.**

25 Under L.R. 232(i), the receiver must maintain an undertaking. Pursuant to L.R. 151(h),
 26 MetLife, upon issuance of the Court’s order appointing the receiver, proposes it post a cash deposit
 27 and submit a proposed written instrument, “executed and acknowledged by the party, setting forth

1 the conditions on which the deposit is made, and the fact that the Clerk may collect or sell the
2 obligations and apply ... the cash deposited[] in the case of default.” L.R. 151(h).

3 **D. THE COURT SHOULD APPOINT PHILLIP CHRISTENSEN OF AGRIGLOBE,
4 INC. AS RECEIVER.**

5 MetLife requests that Phillip Christensen of Agriglobe LLC. (the “Receiver”) be appointed
6 as receiver herein. The Declaration of Phillip Christensen (“Receiver Decl.”) supporting his
7 proposed receivership is attached hereto, which, among other things, provides for a general
8 overview of Agriglobe and a proposed fee schedule, and attaches the proposed Receiver’s
9 curriculum vitae. These documents demonstrate that the proposed Receiver is experienced in the
10 maintenance, management, and daily operation of properties similar to the MetLife Receivership
11 Property.

12 Mr. Christensen is a proper and competent receiver here. He is neither a party nor an
13 attorney for a party to this action; has no interest in the action; and is not related to any judge of
14 this Court. He will accordingly act as an agent of the Court and not of any party, carrying out its
15 receivership duties neutrally and “for the benefit of all who may have an interest in the receivership
16 property,” and it will hold “assets for the court,” not for any party. He will provide, as necessary,
17 an inventory, monthly reports, and a final report. *See* L.R. 232(e)(1)-(2).

18 **IV. CONCLUSION**

19 Based upon all of the foregoing factors, pursuant to Federal Rule of Civil Procedure 66 and
20 L.R. 232, MetLife respectfully submits that a receiver must be appointed to operate, preserve, and
21 protect the MetLife Receivership Property pending a resolution of the above-captioned action.
22 MetLife also respectfully request the entry of a preliminary injunction to prevent parties from
23 interfering with the Receiver or the MetLife Receivership Property during the pendency of this
24 receivership.

25 WHEREFORE, in view of the foregoing, the Plaintiff hereby request that the Court enter
26 an Order:

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6 (ii) for an order calendaring a hearing on the continuation of the receivership and order
7 to show cause as to why a preliminary injunction should not issue. See L.R. 232(c); L.R. 231;

11 (iv) providing MetLife with such other and further relief as the Court deems just and
12 appropriate.

DATED: November 14, 2024

STOEL RIVES LLP

MICHAEL B. BROWN, Bar No. 179222
michael.brown@stoel.com
THOMAS A. WOODS, Bar No. 210050
thomas.woods@stoel.com
BENJAMIN J. CODOG, Bar No. 307034
ben.codog@stoel.com
MICHELLE J. ROSALES, Bar No. 343519
michelle.rosales@stoel.com

Attorneys for Plaintiff
**METROPOLITAN LIFE INSURANCE
COMPANY**

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